

REMARKS

Claims 1-3 and 6-9 are pending in the present application. Claims 4 and 5 have been cancelled herein. Applicant has made herein minor amendments to claims 1 and 2. Applicants submit that the amendments to claim 2 are not narrowing and are not related to patentability.

I. FORMAL MATTERS

A. Claim to Priority

Applicant notes with appreciation the Examiner's acknowledgement of the claim to foreign priority under 35 U.S.C. § 119(a)-(d) or (f) and indication that the certified copy of the priority document filed on July 20, 2000 has been received.

B. Information Disclosure Statements

Applicant notes with appreciation the Examiner's inclusion a copy of the PTO Form 1449's that were submitted with the Information Disclosure Statements filed on July 20, 2002 and November 13, 2002. The references listed therein are initialed by the Examiner, thereby indicating that these references were considered, and will be listed on the face of any patent that issues from the present application.

C. Drawings

The Office Action indicates that the drawings filed on July 20, 2000 are objected to because the feature of claim 5, "the first image is updated by using an image of a region other than the object region of said second image every time a prescribed period of time has elapsed," is not shown in the drawings. Applicant submits that this feature is shown in Fig. 1. Specifically, Fig. 1 shows a background image buffer 4 which stores a background image that is updated when a prescribed period of time is elapsed, as measured by the timer 2. This allows the object region to be extracted even if the background image changes over time. This feature is supported on page 3, lines 27-30 and page 9, lines 1-8. Therefore, Applicant submits that this feature is supported in the drawings, and requests the Examiner to withdraw the rejection.

D. Abstract

Applicant has attached hereto a new Abstract and respectfully requests the Examiner to replace the current Abstract with the Abstract shown herein on a separate page.

II. PRIOR ART REJECTIONS

A. Claims 1-3 and 6

Claims 1-3 and 6 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,914,748 (Parulski). This rejection is traversed.

Applicant submits that Parulski does not teach or suggest to update the background of a first image using the background image of a second image, as recited in amended claim 1.

In the rejection of claims 4 and 5, The Examiner admits that Parulski fails to teach this feature of amended claim 1. The Examiner asserts that U.S. Patent No. 5,809,161 (Autry) teaches to update the background image to correctly obtain the object from the background due to environmental changes that occur after the initial background is obtained, and that such updates occur at a predetermined time. Autry is directed to detecting the movement of large vehicles such as trucks on a highway, identifying the vehicle, and obtain information related to the travel of the vehicle between monitoring points, such as average speed. Applicant submits that Autry does not teach or suggest the features of claims 4 and 5. That is, Autry does not teach or suggest to update the background of a first image using the background image of a second image, as recited in claims 4 and 5. In the rejection of claims 4 and 5, the Examiner asserts that column 9, line 16 – column 11, line 55 teaches this feature. However, this section of Autry teaches to continually update a background image based on lighting condition, such as dawn, daytime, and dusk (see column 9, lines 38-40).

Applicant submits that Parulski does not teach or suggest to pick up a moving image. The present invention can pick up a background image earlier than an image including an object and a background to allow the image

including the object and background to be a moving image of a desired length.

An image picked up earlier can be one of the first and second image. If an image including an object and a background image is a still image, an image of the background alone and an image including the object and the background which is picked up would not provide significantly different contents. If an image including an object and a background is a moving image, then an image of the background alone needs to be picked up earlier than the moving image. In Parulski, if an image including an object and a background is picked up earlier than an image of the background alone, a length of a moving image that can be picked up is limited to no more than a time T_2 based on a previously set time ($T_1 + T_2$), and that if a user does not desire to previously set a length of a moving image, T_2 cannot be previously set. Therefore, it would not have been obvious to modify Parulski to include an image including an object and a background as a moving image.

Applicant submits that Autry fails to teach or suggest to actively pick up an image including only a background as in the present invention. Also, Autry fails to teach or suggest a timing of the storage of an initial image. This deficiency of Autry results from the fact that the system of Autry monitors a road. In Autry, allowing a camera to continually pick up an image would provide an image of only background. In contrast, in the present invention, failure to pick up an image of a person, or the like, would not provide an image of background alone.

The feature of the present invention wherein an image of a background alone is initially picked up and subsequently, when a predetermined period of time elapses, a moving image including an object and the background is picked up, is not taught or suggested by the applied prior art.

Therefore, claim 1 is not anticipated by Parulski and would not have been obvious over Parulski in view of Autry. Claims 2-3 and 6 depend on claim 1. Thus, the rejection of claims 1, 2-3 and 6 under 35 U.S.C. § 102(e) is overcome.

B. Claims 4 and 5

Claims 4 and 5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Parulski in view of U.S. Patent No. 5,809,161 (Autry). Claims 4 and 5 have been cancelled herein. Therefore, the rejection of claims 4 and 5 is moot.

C. Claims 7-9

Claims 7-9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Parulski. This rejection is traversed.

The Examiner admits that Parulski fails to disclose the features of claims 7-9. Relying on Official Notice, the Examiner asserts that the features of claims

7-9 are well known in the art, and asserts that it would have been obvious to modify Parulski to include these features.

Applicant respectfully requests the Examiner to cite a reference(s) that teach these allegedly "known" features. If the Examiner cannot find such a reference, the rejection should be withdrawn, as set forth in MPEP § 2144.03.


Also, Applicants submit that Parulski does not teach or suggest the features of claim 1, on which claims 7-9 depend, as presented above in the discussion of the rejection of claims 1-3 and 6. Therefore, since Parulski does not teach or suggest the features of claims 7-9, the rejection of claims 7-9 under 35 U.S.C. § 103(a) is overcome.

Based on the foregoing, Applicant submits that the present application is in condition for allowance and allowance is respectfully solicited. If the Examiner believes that any of the outstanding issues could be resolved by a telephone conference, Applicant respectfully requests the Examiner to contact the undersigned at the telephone number listed below.

Applicant believes that no additional fees are due for the subject application. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge Deposit Account No. 04-1105.

Respectfully Submitted,

Date: March 8, 2004
Customer No.: 21874



John J. Penny, Jr.
(Reg. No.: 36,984)
EDWARDS & ANGELL, LLP
P.O. Box 55874
Boston, Ma 02205
Tel: (617) 517-5549
Fax: (617) 439-4170